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STATE DENIES PEOPLE WITH DISABILITIES THE RIGHT TO VOTE

The Commonwealth of Virginia and its local electoral Boards are denying people with mental illness who are residing in state facilities the right to vote by absentee ballot, according to a lawsuit filed today. The Virginia Office for Protection and Advocacy (VOPA) announced the suit on behalf of two of its clients with mental illness residing in state institutions that are unlawfully being denied the right to vote. The defendants are some of the Commonwealth's highest state officials, including Governor Timothy M. Kaine. Other defendants include the Secretary of Administration, Viola O. Baskerville; the State Board of Elections and its Chairman, Vice-Chairman, and Secretary; and the Dinwiddie County Local Electoral Board, and its Chairman, Vice-Chairman, Secretary, and Local Registrar.

The plaintiffs reside in Central State Hospital, a state institution for persons with mental illness. They have not been adjudicated incompetent by a court and have retained the right to vote. Because they are Court-ordered to reside in a state institution, they cannot leave the institution on Election Day to vote in person at the polls. According to the suit, they applied for absentee ballots with the Dinwiddie County Local Electoral Board in May 2006, but were denied. The Electoral Board of Dinwiddie County stated that the voters were denied a ballot because they have mental illness, not physical disabilities.

According to the suit, Dinwiddie Board relied upon the State Board of Elections' interpretation of a Virginia statute limiting absentee ballots to people in facilities due to physical disability. The State Board of Elections interpreted this rarely enforced limitation, stating that mental illness is different from physical illness and if a voter has mental illness, that voter cannot obtain an absentee ballot.

The suit alleges that the denial of an absentee ballot violates the United States Constitution, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. The suit further notes that mental illness is widely recognized to be a physical illness resulting from the operation of the brain.

"It is disappointing that in this day and age, persons with disabilities are still being discriminated against by state and local officials in one of our most fundamental rights—the right to vote," said Colleen Miller, the Executive Director of VOPA, the state's watchdog agency for disability rights.